

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ADAM J NYE**  
Claimant

**WAGGONER SOLUTIONS CO**  
Employer

**APPEAL NO: 11A-UI-09597-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/22/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 28, 2011, reference 01, that held he was discharged for misconduct on May 27, 2011, and benefits are denied. A telephone hearing was held on August 11, 2011. The claimant participated. Kelly Baum, HR Representative, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time laborer on March 20, 2010, and last worked for the employer on May 27, 2011. The claimant received employer training that instructed him to report injuries that involved employees.

On May 22, claimant and a co-worker were working at a facility when the worker told the claimant he had been cut and was bleeding. Claimant told the co-worker he needed to report the injury, but he refused. Claimant contacted a driver who he told to call his supervisor to report the injury. Claimant later learned the employer injury report had been received and his co-worker received medical treatment that involved some stitches on his forearm.

The claimant had more time on the job than his co-worker such that the employer considered him the senior employee with the obligation to report the injury. The employer reviewed the matter and concluded claimant had failed to properly report the injury in violation of its policy and discharged him from employment on May 27, 2011.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 27, 2011, for violation of company policy.

The employer failed to offer the policy as evidence in this matter that it believes applied to claimant with the requirement he (personally) report the co-worker injury to the employer. It is not clear that a co-worker who had more tenure is required to report a co-worker injury when that person refuses to do so. The claimant was in substantial compliance with policy by directing other employee personnel to communicate that a co-worker injury had occurred such that job disqualifying misconduct is not established.

**DECISION:**

The department decision dated June 28, 2011, reference 01, is reversed. The claimant was not discharged for misconduct on May 27, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css